IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.2677 OF 2003
WITH
WRIT PETITION NO.322 OF 2004

**W.P. NO.2677/03** :

New India Co-operative Bank Ltd. ...Petitioner.
Versus
Shankar B. Bangera. ...Respondent.

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Mr. Piyush Shah with Mr. Vinod Tayade for the Petitioner.
Mr. N. M. Ganguli for the Respondent.

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**W.P. No.322/04** :

Shankar B. Bangera. ... Petitioner.
Versus
New India Co-operative Bank Ltd. ... Respondent.

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Mr. N.M. Ganguli for the Petitioner.
Mr. Piyush Shah with Mr. Vinod Tayade for the Respondent.

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**CORAM : DR. D.Y. CHANDRACHUD, J.**

August 11, 2006.

**ORAL JUDGMENT:**

The Respondent joined the services of the Petitioner, which is a Co-operative Bank, on 1st October 1985. On 6th October 1992, he

was posted at the Mulund branch of the Bank. After resuming duty for one day, the Respondent remained absent without leave from 7th to 24th October 1992. He resumed duties on 28th October 1992 and submitted a leave application. For a short while, he was asked to report at the branch at Golibar and was thereafter required to report for duty at the Mulund Branch on 9th November 1992. After working at the Mulund branch from 11th to 14th November 1992, the Respondent remained absent without intimation from 16th to 28th November 1992. He resumed on 30th November 1992 and submitted a leave application. On and from 2nd December 1992, the Respondent remained absent without leave and without any intimation to the employer. The employer addressed letters to the Respondent on 5th December 1992, 15th February 1993, 14th June 1993 and 26th June 1993 calling upon him to resume duty. By a final notice dated 26th June 1993 which was served by Registered A.D., the Respondent was informed that if he failed to report for duty, the Bank would presume that he had no desire to resume and that he had voluntarily abandoned service. The receipt of the letter was duly acknowledged, in spite of which, the Respondent did not resume work. On 14th July

1993, the Bank informed the Respondent that was presumed to have voluntarily abandoned service and that his name had been struck off from the muster rolls.

2. The Respondent wrote a letter dated 26th October 1993 making demand for reinstatement under Section 42(4) of the Bombay Industrial Relations Act, 1946 and eventually filed an application under Sections 78 and 79 of the Act before the Labour Court on 7th February 1994. The Petitioner filed its Written Statement. Evidence was adduced on behalf of the parties before the Labour Court. The Labour Court by its order sated 1st December 2000 allowed the application and granted reinstatement with back wages. The matter was carried in appeal and by an order dated 19th August 2003, the order of the Labour Court was confirmed by the Industrial Court.

3. On behalf of the Petitioner, it has been submitted that despite successive letters written by the Bank on 5th December 1992, 15th February 1993, 14th June 1993 and 26th June 1993, the Respondent failed to report for work. The period of absence had

commenced from 2nd December 1992 and it was only after the Respondent failed to respond to the letters and to report for work for nearly seven months that the Bank informed him on 14th July 1993 that he had abandoned service. Counsel submitted that the evidence showed that there was no response by the Respondent to various letters and that he had remained absent without leave or permission. The case of the Respondent that he had asked a neighbour to deliver a letter to the Manager of the Bank was, it has been submitted, ex-facie false. The Labour Court has, it was urged, observed that no credence could be placed on the case of the Respondent that the letter of the Respondent had been delivered to the Manager of the Bank particularly having regard to the fact that the witness who deposed on his behalf was unable to state the date and time of the delivery of the letter and there was no acknowledgment.

4. On the other hand Counsel appearing on behalf of the Respondent supported the judgment of the Labour Court, as confirmed in appeal, on the ground that no disciplinary enquiry was held and that the services of the Respondent came to be dispensed with without complying with the principles of natural justice.

5. In considering the submissions which have been urged on behalf of the parties, it would be appropriate here to make a reference to the settled position in law that the question as to whether an abandonment of service has been established has to be determined on the basis of the facts and the surrounding circumstances including inter alia the length of the absence and the explanation, if any, that the workman has to tender for his absence from duty without permission. The requirement of observing the principles of natural justice is a requirement of the norm of fair treatment. In **D.K. Yadav Vs. J.M. A. Industries Ltd.**,[1] the Supreme Court held that observance of the principles of natural justice has to be implied into Certified Standing Orders which confer upon the employer a right to take adverse action against the employee inter alia on the ground of

1 1993 II CLR 116

absence. The subsequent decisions of the Supreme Court have explained the legal position further. In **Syndicate Bank vs. General Secretary, Syndicate Bank Staff Association**,[2] the Supreme Court held that three principles which emerge from the decided cases on the subject are : (i) The workman should know the nature of the complaint or accusation; (ii) The workman must have an opportunity to state his case; and (iii) The action of the management should be fair, reasonable and just. Where a domestic enquiry has not been held or is found to be vitiated for some reason, the Labour Court or the Tribunal adjudicating the industrial dispute is entitled to go into the question itself and arrive at a finding on the basis of the evidence on the record. In **Vivekanand Sethi vs. Chairman J & K Bank Ltd.**,[3] a bipartite settlement between the Bank and its employees provided that where the employee was absent from work for ninety days or more, the management had to give a notice calling him to report for duty within thirty days. Unless the employee reported for duty within that period or furnished an explanation justifying his absence to the satisfaction of management, he was deemed to have voluntarily

2 2000 II CLR 472
3 (2005) 5 SCC 337

retired from service. The Supreme Court held that while the requirements of natural justice must be observed, natural justice does not necessarily mandate holding a full-fledged departmental enquiry. The Court held as follows:

> "It may be true that in a case of this nature, the principles of natural justice were required to be complied with but the same would not mean that a full-fledged departmental proceeding was required to b e initiated. A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view, amounts to sufficient compliance with the requirements of the principles of natural justice."

These principles have been reiterated in a subsequent decision in **V. C., Banaras Hindu University vs. Shrikant**.[4]

6. In the present case, it is an admitted position that the workman remained absent from duty from 2nd December 1992 right until the point of time when the employer addressed a letter on 14th July 1993 informing him that his absence had been treated as an abandonment of service. The period of absence was well over a

4 (Manupatra SC-2006-386)

period of seven months. In the meantime, letters were addressed by the employer to the workman on 5th December 1992, 15th February 1993, 14th June 1993 and 26th June 1993. The defence of the workman In the course of evidence was that December 1992 his father was ill; there were riots in Mumbai and he had accompanied his father to his village. In the course of his cross-examination, the workman admitted that he had personally given no letter to the Bank for informing the Bank that his father was ill and was in need of treatment. When asked in the course of the cross-examination as to whether he was in possession of any medical records reflecting the illness of his father, the witness initially stated that he would have to search for the record and if traced, it would be produced. No such record was produced. The witness admitted that his father was not hospitalised, but that he was receiving treatment at a Nursing Home. He, however, had no documents to establish the medical condition. The case of the Respondent was that while he himself had not written any letter to the Bank informing the Bank of his father's illness, he was in telephonic contact with a friend and who, according to the Petitioner had delivered a letter to the Branch Manager. The person

who is alleged to have done so was one Pyarelal Gupta who stepped into the witness box. Pyarelal Gupta's evidence was discarded even by the Labour Court which found that the evidence was not worthy of credence. He claimed in the course of his evidence that he had delivered a letter to the Manager of the Bank. The date or time of the letter of delivery was not mentioned by him in his evidence and when he was cross-examined on this aspect, he stated that he did not remember either the date or time. The witness stated that he had not asked for any acknowledgment of the letter from the Branch Manager. The Labour Court was correct in its assessment of the evidence of Pyarelal Gupta because a reading of the deposition of the witness clearly establishes that he was not a witness of truth. The whole theory that a letter was delivered by Pyarelal to whom the Petitioner had handed over a letter was clearly shown to be false and not worthy of any credence whatsoever. The Respondent's case was also that there were riots in Mumbai. On behalf of the Bank, the first witness who deposed in the case was Arvind Mangaonkar who was working in the Mulund Branch at the relevant time as Manager. He deposed to the facts relating to the prolonged absence from duty of the

Respondent and stated that both the Central Office as well as the Mulund Branch had addressed letters to the Respondent on 5th December 1992 and thereafter calling upon him to resume duty. The Branch Manager stated that no person by the name of Pyarelal had ever come to him nor had any such letter been handed over to him. The witness stated that the Bank was functioning all along during the period of December 1992 and that the riots had had no effect on the functioning of the Bank. Vasant Pramod Patil who was employed by the Bank in the Clerical Cadre also deposed on behalf of the Bank. The witness was incharge of the writing of the Outward Register in the Despatch Section and he was shown the entries in the Outward Register for the months of June, July and August 1993. In fact, it would be evident from the evidence of the Respondent himself that he duly admitted that the final notice of the Bank dated 26th June 1993 had been received by his wife and that the acknowledgment did bear her signature.

7. The Labour Court having assessed the grievance of the Respondent that he had left Mumbai in December 1992 to

accompany his father to his village and that he instructed his friend to deliver a letter to the Branch Manager held that the circumstances were sufficient to draw an inference that no such intimation had been furnished to the Mulund Branch regarding the absence of the Respondent from work. The Labour Court, however, held that the Bank did not produce any evidence to prove that the Respondent had not taken his father to the village and that he had to remain at the village for the treatment of his father for a period of two or three months. The Labour Court held that during this period a riot took place and it was not possible for any person to move out of his residence. This part of the appreciation of the evidence by the Labour Court was ex-facie perverse. The absence in the present case is not of a few days but of a period in excess of seven months. It was not even the case of the Respondent that there was a law and order situation for this prolonged period of absence and to even assert so would have been preposterous. There is admittedly not a single letter by the Respondent to the employer – neither did he personally deliver such a letter nor did he send a letter by post. The case that he had instructed a friend has been disbelieved. The Respondent's case

was that he was required to accompany his father to his village for the purposes of treatment. Absolutely no material was produced on the record to sustain that case. Though it was the case of the Respondent that his father was receiving medical treatment, no evidence was forthcoming in that regard. The Labour Court was clearly in error in placing a negative burden on the Bank to establish that the Respondent had not left Mumbai for his village in connection with the treatment of his father. There is absolutely no reason to discard the evidence of the witness who deposed on behalf of the Bank and who stated that despite the Bank's letters dated 5th December 1992, 15th February 1993, 14th June 1993 and 26th June 1993, the Respondent had not reported for work. The Court below was of the view that the action of the Bank was vitiated since no formal chargesheet was issued for unauthorised absence. As the judgments of the Supreme Court which have been adverted to earlier show, it is necessary that the employer must comply with the principles of natural justice but the observance of natural justice is not required to be stretched to the extent of requiring the employer to convene a disciplinary enquiry in every such case. What is required

of the employer is to give a reasonable opportunity to the workman to report for work or, in the alternative, to explain his absence. In the present case, the employer has done so. That apart, evidence was recorded before the Labour Court and it is manifestly clear that the entire case which was sought to be set up on the part of the Respondent was false and not worthy of credence. There has, therefore, been a manifest perversity in the assessment of evidence by the Labour Court and a failure to observe the binding principles of law laid down the Supreme Court of which a reference has been made in the earlier part of the judgment. In these circumstances, the order of reinstatement cannot be sustained. The application filed by the Respondent was liable to be dismissed.

8. The judgment of the Industrial Court dated 19th August 2003 dismissing the appeal preferred by the employer (Appeal (IC) No.19 of 2001 is accordingly quashed and set aside. BIR Application No.35 of 1994 shall accordingly stand dismissed. Writ Petition 2677 of 2003 filed by the employer shall accordingly stand allowed in these terms. Writ Petition No.322 of 2004 filed by the workman shall stand dismissed. There shall be no order as to costs.

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